

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

In re	§	
	§	Case No. 20-44289-169
Robert J. Ambruster, Inc.,	§	
	§	Chapter 11
Debtor.	§	
	§	Re: Doc. No. 134

**ORDER STRIKING NOTICE OF CIVIL ACTION PETITION FOR  
ADVERSARY PROCEEDING FOR DECLARATORY JUDGMENT [SIC]**

Robert J. Ambruster, Inc. (the “Debtor”) commenced its bankruptcy case, docketed as case number 20-44289-169 (the “Case”), under Chapter 11 of Title 11 of the United States Code (“Bankruptcy Code”) on September 3, 2020 (“Petition Date”). See Doc. No. 1. The Debtor elected to proceed under Subchapter V of the Bankruptcy Code. See Doc. No. 4 at 2.

On March 4, 2021, Jeffrey Mize, *pro se* (“Mr. Mize”), commenced an adversary proceeding, docketed as adversary number 21-04013 (the “Adversary Proceeding”), against Robert C. Drace by filing what Mr. Mize captioned as “Petition for Adversary Proceeding Complaint for Declaratory Judgment; Petition to Pierce the Corporate Veil; Petition for Injunction & Discharge Order; Petition for Sanctions and/or Damages [sic]”, but which properly should have been denominated as an Adversary Complaint. See Doc. No. 133; Adv. Pro. Doc. No. 1; see also Fed. R. Bankr. P. 7003 (making Federal Rule of Civil Procedure 3 applicable in adversary proceedings); Fed. R. Civ. P. 3 (stating that the filing of a complaint commences a civil action); accord Fed. R. Bankr. P. 7007 (making Federal Rule of Civil Procedure 7 applicable in adversary proceedings); Fed. R. Civ. P. 7(a) (providing that only complaints, answers, counterclaims and, if a court so orders, replies to answers comprise permitted pleadings). On the same day, Mr. Mize docketed his Notice of Civil Action Petition for Adversary Proceeding for Declaratory Judgment

[sic] (the “Notice”). See Doc. No. 134. The Notice fails clearly to identify any relief sought from this Court; however, the Notice’s final paragraph purports to set a deadline for an answer or other response in the Adversary Proceeding, stating “The defendant will be required to furnish to this Party a Responsive Answer to the Civil Action Lawsuit that was brought before the U.S. Bankruptcy Court within 30 days [sic]”. See id. at 3.

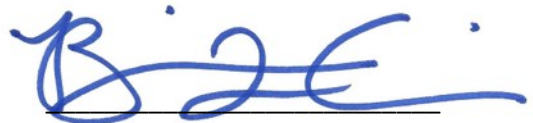
Federal Rule of Bankruptcy Procedure 7004 (“Bankruptcy Rule 7004”) governs issuance of summons and service of process in adversary proceedings. See Fed. R. Bankr. P. 7004. Bankruptcy Rule 7004 incorporates some, but not all, of the provisions of Federal Rule of Civil Procedure 4 (“Rule 4”). See id. One of Rule 4’s provisions applicable in adversary proceedings is Rule 4(a), which requires any summons to be signed by the clerk of the applicable court and bear the court’s seal. See Fed. R. Civ. P. 4(a). To that end, Local Rule 7004 of the United States Bankruptcy Court for the Eastern District of Missouri (“Local Rule 7004”) provides that this Court “will electronically sign, seal, and issue summonses”. See L. R. 7004(A). After issuance of summons, the plaintiff in any adversary proceeding becomes responsible for timely service of a copy of the applicable complaint and the summons. See Fed. R. Civ. P. 4(c)(1), 4(e)-4(j); Fed. R. Bankr. P. 7004(b)-7004(e); L. R. 7004(B).

This Court issued the summons in the Adversary Proceeding contemporaneously with the entry of this Order. This Court notes that, as a courtesy, it provided Mr. Mize and other parties in the Case an opportunity to weigh in on the calendaring of the initial pre-trial conference setting in the Adversary Proceeding at hearing in the Case on March 9, 2021. At that time, this Court selected April 27, 2021 at 11:00 a.m. for that initial pre-trial conference with Mr. Mize’s agreement—even though Mr. Mize subsequently changed his mind about the date during that same March 9, 2021 hearing. The summons issued by this Court for the Adversary Proceeding reflects

the April 27, 2021 pre-trial date. See Adv. Pro. Doc. No. 3. This Court has sent Mr. Mize a copy of the summons via mail, in accordance with Local Rule 7004(A).

It is unknown whether Mr. Mize intended the Notice to supplant any summons issued by this Court Adversary Proceeding or to confuse parties in the Adversary Proceeding about deadlines, but this Court need not determine the Notice's intent. Summons has issued in this matter and Mr. Mize now holds the responsibility to accomplish service compliant with applicable law. Therefore, this Court now **STRIKES** the Notice of Civil Action Petition for Adversary Proceeding for Declaratory Judgment [sic] (Doc. No. 134) in its entirety.

DATED: March 10, 2021  
St. Louis, Missouri  
mtc

  
BONNIE L. CLAIR  
United States Bankruptcy Judge

Copies to:

Copy Mailed To:

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**Robert Drace**

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**Jeffrey M Mize**

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Batesville Casket Company

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Chase Card Member Services

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Citizens National Bank

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Criswell Casket Company

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Saint Charles, MO 63303

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Jefferson City, MO 65102

JS Paluch Co., Inc.  
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Schiller Park, IL 60176

LPI  
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53151-0817

Missouri Department of Labor & Ind.  
Rel. Division of Employment Security  
Jefferson City, MO 65104-0059

Missouri Funeral Directors and Embalmers  
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Saint Louis, MO 63166

Sams Club MC/SYN CB  
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Orlando, FL 32896-0016

Spire  
Drawer 2  
Saint Louis, MO 63171

St. Louis County Collector of Revenue  
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Saint Louis, MO 63105

The National Directory of Mortuaries  
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Travelers Insurance J Thomas Company, Inc.  
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Saint Louis, MO 63101